

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NEW CHINA CAFE,)	Case No. 4:25-cv-184
)	
Plaintiff,)	Judge J. Philip Calabrese
)	
v.)	Magistrate Judge
)	James E. Grimes, Jr.
NORFOLK SOUTHERN)	
CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	
)	

OPINION AND ORDER

Plaintiff New China Café is a business in East Palestine, Ohio allegedly affected by the train derailment on February 3, 2023. From that derailment and its aftermath, Plaintiff brought suit, alleging seven claims. As relevant here, Count VII asserts a claim for negligent and intentional infliction of emotional distress. Defendants moved to dismiss that claim (ECF No. 14), then the parties jointly moved for its dismissal (ECF No. 16).

Under the law of this Circuit, Rule 41(a) can only be used to dismiss entire *actions*; accordingly, it cannot be used to dismiss fewer than all parties or all claims. *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961) (noting that a plaintiff may only dismiss an “action” using Rule 41(a), where an “action” is interpreted to mean “entire controversy”). To dismiss fewer than all claims or parties from an action falls to Rule 21. *See id.*; *Sheet Metal Workers’ Nat’l Pension Fund Bd. of Trustees v. Courtad, Inc.*, No. 5:12-cv-7238, 2013 WL 3893556, at *4 (N.D. Ohio

July 26, 2013) (citing *Philip Carey Mfg.*, 286 F.2d at 785) (“A plaintiff seeking to dismiss only one defendant from an action must move the Court to do so under Rule 21.”).

Rule 21 provides, “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against any party.” Fed. R. Civ. P. 21. Unless the parties agree otherwise, the Court generally drops a claim under Rule 21 without prejudice. *See Michaels Bldg. Co. v. Ameritrust Co. N.A.*, 848 F.2d 674, 682 (6th Cir. 1988). Here, the parties agree that dismissal without prejudice is appropriate. (ECF No. 16, ¶ 2, PageID #138.) Dismissal of a claim under Rule 21 is committed to the sound discretion of the district court. *Hiller v. HSBC Fin. Corp.*, 589 F. App’x 320, 321 (6th Cir. 2015) (per curiam) (citing *Sutherland v. Michigan Dep’t of Treasury*, 344 F.3d 603, 612 (6th Cir. 2003)). Based on the Court’s review of the record, and the unopposed motion to dismiss the claim, the Court sees no reason not to dismiss Count VII without prejudice.

Accordingly, the Court **GRANTS** the parties’ joint motion to dismiss Count VII without prejudice (ECF No. 16) and **DENIES AS MOOT** Defendants’ motion to dismiss (ECF No. 14).

SO ORDERED.

Dated: May 29, 2025

A handwritten signature in black ink, appearing to read "J. Philip Calabrese", written in a cursive style.

J. Philip Calabrese
United States District Judge
Northern District of Ohio